

Claims 26, 27, 32 and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over See (US 2004/0003094) in view of Kikinis (US 6,078,566). Claims 1 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over See in view of Kikinis and further in view of Applicant's allegedly admitted prior art. Claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over See and Kikinis and further in view of Examiner's Official Notice.

Statement of Substance of Telephone Interview

Applicant thanks the Examiner for a useful telephone interview on February 17, 2009 between the Examiner and Peter Bradford counsel for Applicant. The application of See to claim 39 was discussed, and counsel for Applicant presented arguments substantially as seen below. Agreement was reached that the claims distinguish over the cited references. The Examiner therefore agreed to withdraw the pending rejections of the claims.

Claim rejections

Claim 39

Claim 39 recites "capsulating more than one of the accumulated packets into one encapsulated packet". The Examiner asserts in the Final Office Action that this feature is disclosed by See. As explained by Applicant in the Amendment of October 31, 2008, See does not disclose this feature, but rather discloses a system for creating individual mirror packets (copies of the original packets), encapsulating *each mirror packet*, and then routing the mirror packet. The purpose of See is to allow for a mirrored packet flow to be created, that is, for a stream of qualified packets to be copied and routed differently than the original packets. There is no teaching or suggestion of "capsulating more than one of the accumulated packets into one encapsulated packet", as recited in claim 39. Indeed, as the purpose of See is to "mirror[] traffic from a first network device to a second network device" (abstract), that is, to produce the same

flow of traffic, encapsulating more than one packet would leave multiple packets joined when set to a second device (and thus the flow would not be mirrored), or the individual packets would have to be separated, without any apparent benefit. More to the point, such a flow would not be a mirrored packet flow, because the packets would not mirror the original packet flow. Based on the disclosure of See, it is abundantly apparent that See discloses that the duplicated packets are each capsulated, rather than disclosing “capsulating more than one of the accumulated packets into one capsulated packet”, as recited in claim 39.

Claim 39 is therefore patentable over the cited references. Claims 26, 27, 32, and 40 have similar features, and are therefore analogously patentable over the cited references. Claims 28-31 and 33-38 are patentable at least due to their dependencies.

Claim 1

Claim 1 recites “sorting means for sorting received packets into prioritized packets and non-prioritized packets”. The Examiner admits that this feature is not taught or suggested by See, but instead looks to Kikinis. However, as explained in the Amendment of October 31, 2008, Kikinis discloses a process for sorting audio data before it is packetized. Therefore, Kikinis does not teach or suggest “sorting means for sorting received packets into prioritized packets and non-prioritized packets”. In the Office Action the Examiner responds that the fact that claim 1 recites sorting *packets* will not be given patentable weight. However, sorting audio data before it is packetized is not what is recited in claim 1, nor would it have suggested to one of skill in the art to sort prioritized and non-prioritized packets. The procedures for evaluating audio data, such as spectral or intensity analysis, would not be convenient in the case of evaluating packets, as they would require extracting the audio data from the packet. Kikinis specifically teaches away from

packetizing the audio data first, and therefore cannot be interpreted as suggesting sorting packets rather than audio data.

Furthermore, the sorting, accumulating, capsulating and transmitting means of claim 1 are elements of 'a packet transmission system for transmitting a packet between said base station and said at least one wireless LAN terminal via the wireless LAN'. The Examiner admits that this feature is not taught or suggested by See, but rather looks to the related art system in the present specification, figure 14. However, the Examiner has not explained why it would be obvious to use the LAN terminal of present figure 14 in the system of See. As seen in figure 1, See discloses a network architecture so that a mirrored packet flow to be sent to a target network device to be "analyzed by a traffic analysis tool, for example" (abstract). To create such a mirrored packet flow at a wireless LAN terminal would force both the original and mirrored packet flows to be transmitted wirelessly, eliminating the generic nature of the system without any apparent benefit. Also, the sorts of target network devices disclosed in See are not typically connected by a wireless LAN to the network. One of skill in the art would therefore not combine See and present figure 14 as the Examiner alleges.

Claim 1 is therefore patentable over the cited references. Claims 2-8 are patentable at least due to their dependencies.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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